While many parties support the development of an auction mechanism, GTE is the only party that has prepared and submitted in this proceeding a detailed proposal for how such a mechanism should be structured. CSE Foundation (at 8) believes that "the proposal by GTE offers a useful perspective from which to approach competitive bidding," and urges the Commission to further evaluate this proposal.[75] CSE Foundation (at 7-8) notes that the "Board did not raise specific objections to the potential effectiveness of the GTE model, choosing instead to pose important but more general questions as to its structure and implementation."[76] CSE Foundation (at 10) concludes: "Given that the Joint Board offers no substantial criticism of competitive bidding and agrees with the proponents of this method that it should be further explored, the lack of support for more detailed investigation is unjustified. We urge the Commission to give at least as much attention to universal service support methods based on competitive bidding as it will give to methods based on proxy models." GTE agrees with the CSE Foundation, and suggests that a further NPRM is the appropriate vehicle for this effort.

The Joint Board (at ¶ 349) notes that GTE's auction proposal has evolved over time as GTE has worked with the Commission staff, and with Professor Paul R. Milgrom, to develop the best possible auction structure. To the extent that the Commission has concerns that parties may not have had adequate opportunity to

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[75] Other parties agree that the Commission should move forward to develop a specific auction plan. *See,* Sprint Spectrum at 5, Ameritech at 11, AirTouch at 24.

[76] GTE shows in its comments (at 61-62) that these questions can readily be answered.

comment, a Further NPRM would provide that opportunity.[77] GTE believes that an effective auction proposal can be developed, based on the record already gathered and on that generated by a Further NPRM, in time for an auction mechanism to be adopted as part of the Federal plan in May. However, the Commission should exercise care in the design of the rest of the Federal plan to ensure that all the features of the plan are consistent with the use of an auction.[78]

One of the advantages of the auction model is that it addresses universal service in a way that is consistent with the way private firms and government normally handle procurement decisions, rather than with the way universal service has been handled in the past. Thinking about auctions is useful, therefore, not only because auctions are a potentially superior approach to universal service, but also because the market rigor of the auction process tends to expose inconsistencies in any universal service framework.

For example, one of the questions asked by the *Recommended Decision* (at ¶ 348) with respect to auctions is whether only carriers willing to accept a specified obligation to serve should be permitted to bid. As GTE demonstrates *supra* and in its Comments (at 62-65), any universal service plan, whether based on competitive bidding

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[77] GTE notes that since GTE submitted Professor Milgrom's paper on August 2, 1996, there has been one opportunity for formal comment (in the December 19, 1996, comment round regarding the *Recommended Decision*). In addition, several interested parties have provided *ex parte* communications to the Commission on the subject of auctions.

[78] For example, as discussed *supra*, allowing *Eltel's* to obtain universal service support without meeting symmetric service-related obligations would render an auction scheme moot.

or not, must link the receipt of high-cost support to a well-specified obligation to serve. Without such a symmetric obligation, the plan would fail to achieve the universal service objectives established by Congress and by the *Recommended Decision*. The need for an obligation to serve is clear when considering an auction proposal, since the auction forces the Commission to define what it is putting up for auction; it must specify what it wants to "buy" in return for the amount being bid. However, this need is equally great for a cost-based plan; the only difference is that the need is less apparent in the absence of the market-driven clarity of the auction process.

Ameritech (at 7) agrees that an obligation to serve is necessary, both for competitive neutrality and for sufficiency: "This is true regardless of whether a bidding process or a proxy cost vehicle is used to determine support payments."[79] Further, as detailed *supra*, the 1996 Act does not automatically entitle all eligible telecommunications carriers to receive universal service support upon designation by a state commission because *Eltels* may only receive universal service support in accordance with the funding mechanism devised by the FCC pursuant to Section 254.

GTE urges the Commission to move forward expeditiously with a Further NPRM

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[79] For a useful discussion of service obligations and their role in universal service, *see also* Ameritech at 7-10 and the Cherry-Wildman report attached thereto.

to allow parties to supplement the record on the design of an auction mechanism.[80] This process would permit the Commission to adopt an auction mechanism as part of the Federal plan in May. In designing other aspects of the Federal plan, the Commission should ensure that these will be consistent with the use of an auction mechanism. In particular, a correctly specified obligation to serve is essential for any universal service plan.

VIII. FUNDS USED TO SUPPORT UNIVERSAL SERVICE MUST BE OBTAINED IN A COMPETITIVELY NEUTRAL MANNER.

As discussed *supra*, in the context of discussing the definition of competitively neutrality, a wide range of commenters recommend the Commission establish a scheme that obtains funding for universal service support in a manner that does not advantage any firm.[81] Unfortunately, the Joint Board's proposed "gross telecommunications revenues net of payments to other carriers" method is not competitively neutral, particularly when combined with the lack of any provision in the *Recommended Decision* for carriers to pass through universal service contributions in the rates they charge their customers.[82]

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[80] A Further NPRM could also be structured to give parties an opportunity to comment in the proxy cost models which have recently been submitted in preparation for the Commission's workshop. It would appear that the proxy models have "evolved" to at least as great a degree as has GTE's auction proposal, and have done so too recently to permit comment by any party. Even by the time the workshop commences, parties will not have had sufficient opportunity to evaluate the latest models. It does not appear reasonable that the Commission could adopt one of these models without giving parties an opportunity to comment on them.

[81] For example, CompTel at 4; MCI at 1; California Consumer Affairs at 21-22; General Communications, Inc. (at 2-3).

[82] *Recommended Decision* at ¶ 807.

A. The Commission Must Reject The Joint Board's Recommended Method Of Obtaining Funds To Support Universal Service.

The Joint Board's recommended method of assessing carriers for contributions to universal service is not competitively neutral and must be rejected. In the first instance, it is not competitively neutral because only one class of carriers -- incumbent LECs -- are not free to adjust their rates to recover their assessment from any set of customers they see fit. Incumbent LECs must go through long, involved, and uncertain regulatory processes to attempt to adjust their rates.[83] Thus, while other carriers will be able to recover their contributions through rates to their customers, as competitive firms would do with any cost that affects all firms in an industry, ILECs would not. This omission is not only unfair to ILECs as a group, and not competitively neutral; it also simply fails to provide the universal service plan with a source of funding, since, as GTE demonstrated in its comments, no firm can provide, over time, a source of funding except through the revenues it obtains from its customers. In the process of demonstrating this fact, however, the Commission could inflict great harm on ILECs, the communities they serve, and on the competitive market.[84] .

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[83] *See* SBC at 13, Ameritech at 30-31. In fact, it is the very fact that ILEC rates have been constrained in the past that give rise to the need for universal service support. It would be odd if the mechanism designed to deal with that problem itself assumed that ILECs could adjust their rates at will. In fact, as GTE showed in its comments(at 33-35), the *Recommended Decision* is internally inconsistent in its statements regarding pass-through.

[84] *See* Universal Service Alliance at 16: "Failing to provide a specific means for carriers to recover would also make it far more difficult for carriers to make the infrastructure investments needed to modernize their networks and bring advanced telecommunications services to high-cost areas. In that event, the entire community (including the very consumers and institutions the Commission are seeking to benefit) would be worse off." Footnote omitted.

Secondly, because the Joint Board fails to address a method for carriers to directly obtain the funds they must remit to the fund administrator, the *Recommended Decision*'s proposed method of collecting monies is unreasonable and arbitrary.[85] In particular, the assessment under the Joint Board's scheme will fall more heavily upon incumbent LECs than on any other class of carrier. Because adequate new funding will not be available to offset the current implicit sources of support, this approach would institutionalize the current distortions in rate levels caused by hidden universal support subsidies and eliminating the opportunity for ILECs to compete on the basis of their own costs and ingenuity.

B. The Commission Must Adopt An Explicit Surcharge As The Means For Contributing Carriers To Pass Through Their Assessment To Their Customers.

The record established by an overwhelming number of comments supports use of an explicit line item on customer bills as the means for carriers to pass through the amount of their assessment in an explicit manner as required by the 1996 Act, regardless of how the Commission ultimately decides to assess contribution responsibility.[86]

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[85] The *Recommended Decision* at ¶ 812 rejects use of a surcharge on the mistaken premise that it would violate the statutory requirement that carriers, not consumers, finance support mechanisms.

[86] AT&T at 8-9, specifically envisions that ILECs would "assess the cost of universal service proportionately across all of their services" to avoid "strategically allocat[ing] the cost of the subsidy among its various services to the disadvantage of consumers and competitors." This simply means that all ILEC services -- access, unbundled elements, and local services -- would have an equal pass-through of universal service subsidy burden.

MFS (at 12) succinctly describes the overwhelming consensus view: "If telecommunications consumers are required to subsidize low-income subscribers, service to high-cost areas, schools, libraries and health care providers, they ought to know how much support they are required to provide." MFS (at 13) also correctly portrays the statutory requirement: "Explicitly reflecting universal service support is expressly required by § 254(e); a line item entry on customers' bill is very explicit and fulfills the statutory requirement that universal service support be explicit." WorldCom (at 41) agrees: "[A]nything other than a line item on a customer bill is an implicit charge which does not conform with the Act's express and unwaivable requirement of a 'specific and predictable' support mechanism that is also 'explicit and sufficient.'"[87] Similarly, Paging Network (at 16-17) says: "the disclosure of the universal service charge as a line item becomes an implementation of the Commission's mandate to structure universal service mechanisms in an equitable and nondiscriminatory fashion, and one which is at the same time competitively neutral." AirTouch (at 26) provides the best summary, saying "principles of governmental accountability demand that the public

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[87] *See also*, California Consumer Affairs at 40: "Consumers have a right to know what they are paying to support universal service." CSBA at 6-7: "Indeed, failure to provide an explicit means for carrier's to recover their contributions would violate 254(d)'s requirement that the funding mechanism be 'specific, predictable and sufficient.'" Ameritech at 31: A specific surcharge on carrier's bills "would help ensure competitive neutrality and is consistent with the statute's prescription that the universal service funding mechanism be 'specific,' 'explicit,' 'equitable,' and 'nondiscriminatory.'" Footnote omitted.

have the right to know what they are paying in universal service taxes."[88]

The Joint Board's proposition (at ¶ 812) that the 1996 Act does not permit a direct pass-through is incorrect. The Joint Board relies on the language in Section 254(d) that requires carriers to contribute on an equitable and nondiscriminatory basis. However, the Joint Board's reading of this provision is simply mistaken. Section 254(d) simply requires that contributions be collected in a manner that is competitively neutral with respect to carriers; it also ensures the Commission's authority to establish a funding mechanism for the stated purpose. It does not invalidate the 1996 Act's clear mandate for an explicit universal service support mechanism.[89] Nor does Section 254(d) establish the proposition that funding will materialize out of thin air, or that carriers are to somehow obtain funds from a source other than their customers. Because for-profit businesses have only one source of funding for all their business purposes and obligations, their customers, such a proposition is absurd.

California Consumer Affairs (at 14) says it best: "In the final analysis, any regulation-mandated subsidy that entails any cost to a provider is paid for by those customers who do not receive the subsidy. There is no free lunch." WorldCom (at 40-

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[88] *See also* CompTel at 15: "such treatment is consistent with the way in which other types of taxes are identified, including state and federal excise taxes, sales taxes, and gross receipts taxes. It also would allow carriers to ensure that their prices are in proportion to the costs caused by the particular use." Footnote omitted.

[89] *See* LCI at 14: "There is no justifiable basis for requiring carriers to drive the cost of universal service underground by incorporating it into the rates carriers charge for service. Indeed, doing so would violate the clear intent of Congress to make universal service support mechanisms explicit and identifiable." (footnote omitted) *See also*, PCIA at 28-29: "Permitting carriers to recover their contributions to the universal service fund from end users also is consistent with the public interest."

41) agrees: "consumers will always pay universal service contribution; the only question is whether it is implicitly included in a carrier's rates, or explicitly delineated on the consumer's bill."[90]

Further, if the Commission fails to adopt an explicit surcharge approach, it would put the Commission "on a collision course with a number of states which have adopted explicit surcharges as part of their universal service funding mechanisms."[91] In addition to California, "seven other states (Arizona, Colorado, Connecticut, Idaho, Kansas, Maine and Utah) use [surcharges] to fund universal service."[92]

AT&T (at 8-9) summarizes the salient points that the Commission must recognize: (1) absent a pass-through, support will not be explicit; (2) "an explicit, visible recovery method best ensures competitive neutrality;" and (3) an explicit surcharge will enable regulators to prevent the subsidy from "spinning out of control in the future." It is important to note that each of these points are directly related to the principle mandates of the 1996 Act, discussed *supra*.

Given that all universal service funding must come from customers, the Commission cannot "shield" customers from paying the costs of universal service. Ultimately, it cannot even alter the amount that is passed through to a retail transaction. Consider, for example, an IXC that has $10 of revenue, and that pays a LEC $4 for access. If the "rate" were 10%, then, on a retail surcharge basis, the IXC would apply a

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[90] *See also* SBC at 12: "customers ultimately [fund universal service] and they should be made aware of their contributions."

[91] CSBA at 7.

[92] *Id.* at 9.

surcharge of $1 to its customers. If, on the other hand, the assessment were on a net revenue basis, with a proper pass-through of each carrier's obligations, then the IXC would owe $.60 to the fund, which it would pass through in a rate increase. But it would also experience a $.40 increase in its access expense, as the ILEC passed through its own obligation in its access rates. The IXC would then pass on the additional $.40 to its customers. The net increase in charges seen by retail customers of the IXC would be the same.[93] Sprint (at 10) agrees: "If revenues net of payments to other carriers is the contribution base, LECs will simply pass through a portion of their universal service contribution to IXCs in the form of higher access charges, and IXCs will accordingly adjust their long distance rates to recover the LEC pass through." Similarly, the CA PUC states: "to suggest that somehow carriers will pay or absorb a greater share of the assessment than consumers if a gross revenues based approach is used rather than a retail surcharge is a fallacy with no economic foundation."[94] What is crucial, both to assure the availability of funds and to make the funding mechanism competitively neutral, is that carriers have an automatic mechanism which allows them to pass through their universal service contributions to their customers on a uniform basis. GTE agrees with AT&T that regardless of the assessment method chosen, "the Commission should still require each carrier's obligation to be recovered equiproportionally from all

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[93] There would, of course, be a slight difference, because the $1 increase in the IXCs revenue would now increase its obligation to the fund. This is the "second-order" effect discussed infra.

[94] CA PUC at 14-15.

services and reflected as a line-item on the services bill.[95]

C. The Commission Must Adopt An Explicit Surcharge Assessed On End User Retail Revenues As The Means For Obtaining Funds To Support Universal Service.

GTE (at 38-40) documents the problems associated with the Joint Board's method of assessing contribution obligation and shows that assessments based on end user retail revenues would be more competitively neutral and far simpler. Many parties agree.

California Consumer Affairs says: "the resolution of this complex problem is simple. The Commission should . . . adopt an all end user surcharge (AEUS) funding mechanism."[96] "Retail surcharges are a competitively neutral way to collect revenues to support universal service programs."[97] The Vermont Comments (at 11) agree: "A retail sale option would be competitively neutral."[98] Ameritech (at 15-17) points out that the Joint Board's proposal also would effectively discriminate against facilities-based carriers, thus distorting the make-buy decision of new market entrants.

Many of the administrative issues, such as keeping track of all intermediate transactions, are avoided by a retail surcharge.[99] Having a carrier pay based on the final retail price "might reduce bookkeeping and accounting costs. Carriers would be

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95 AT&T at n.5.

96 California Consumer Affairs at 38. *See id* at 40: "there is no question that the AEUS is most fair and just to consumers."

97 CA PUC at 13-14, footnote omitted.

98 *See also*, LCI at 14, urging the Commission to reject the Joint Board's proposal in favor of "a surcharge for universal service on retail end-user bills."

required to report revenues only when a product is sold to the final retail customer."[100] Financing "universal service programs through explicit surcharges . . . is an established, effective means of collection."[101] In addition, a retail based surcharge obviates the problem that the Joint Board acknowledges concerning the collection of surcharges based on revenue generated from cost-based unbundled network element prices."[102]

A retail surcharge would also avoid the "second-order" effect associated with a gross-receipts type charge. That is, a gross-receipts charge would "require a carrier to build universal service contributions into its gross charge for a service [that] would cause the contribution itself to be treated as revenues, which would then be subject to federal and state taxes -- and, ironically, to the universal service tax itself."[103] The Vermont Comments (at 11) also recognize this problem of forcing each wholesale transaction to include some revenue to support universal service, thereby distorting wholesale prices. In contrast, "a retail sale option requires only the final carrier to make payment, and wholesale prices can be set without reference to universal service

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[99] *See* GTE at n.59.

[100] Vermont Comments at 11.

[101] CA PUC at 15.

[102] *Id.* at 13-14 (footnote omitted).

[103] CompTel at 17.

charges."[104]

IX. FUNDS USED TO SUPPORT UNIVERSAL SERVICE MUST BE OBTAINED FROM BOTH INTERSTATE AND INTRASTATE REVENUES.

There is broad support for the *Recommended Decision*'s conclusion that funds to support universal service should be drawn from both interstate and intrastate revenues. For example, MCI (at 10-11) says: "A subsidy mechanism funded based on only interstate revenues would result in a significantly reduced, and insufficient, funding base." This would lead to results at odds with a competitive market and would "increase regulatory burdens and distortions." *Id.* at 11.

MFS (at 40-41) says perceptively: "The universal service policies enumerated in the Telecommunications Act are intended to encourage end-users to subscribe to telephone service in toto, not to just interstate or intrastate telecommunications. Universal service is not a jurisdictionally specific or jurisdictionally separable objective." If the federal plan drew only on interstate revenues, suggests MFS (at 41), this "would benefit carriers whose business was primarily intrastate in nature at the expense of competitors whose revenues were predominantly interstate."

CompTel (at 6-9) expresses similar concerns. It agrees (at 6) with Commissioner Chong's reading of the legislation, and says (at 7) otherwise disproportionate burdens would be placed on some telecommunications providers and

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[104] The *Recommended Decision*'s concern that exclusively wholesale providers would not contribute is misplaced. Because each of the wholesaler's customers would incur an additional universal service contribution as a result of making a purchase of the wholesale offering, the effect on the demand for that offering would be the same as if the wholesale provider had added a surcharge of an equal amount to its price.

(at 8) would lead to significant distortions.

GTE along with these and many other parties enthusiastically supports the FCC's conclusion that contributions must be drawn from both interstate and intrastate revenues.

X. THE COMMISSION MUST REJECT THE *RECOMMENDED DECISION*'S PROPOSAL THAT THE SUBSCRIBER LINE CHARGE CAP BE REDUCED.

The *Recommended Decision* proposes (at ¶ 773) that the cap on the Subscriber Line Charge ("SLC") be reduced for primary residential and single-line business. As AirTouch (at 14) suggests: "The Joint Board offers no empirical evidence to support its recommendation and no analytical framework within which to address the relevant issues. The reason for this lack of support is that there are, in fact, no data to back it up and the implicit analytical view is illogical." Thus, GTE and many other commenters oppose such a reduction for legal, public policy and economic reasons.

GTE (at 75) points out that the Joint Board fails to address why the SLC and Carrier Common Line Charge ("CCLC") exist in the first place. They are, in part, a means of recovering intrastate loop costs in the federal jurisdiction. As such, both of these interstate access rate elements serve to provide hidden subsidies for local service prices from interstate access prices.[105] If the Commission adopts the Joint Board's SLC reduction recommendation, it will perpetuate hidden subsidies in violation of the 1996 Act because the costs in question will not magically disappear just because

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[105] *See* WorldCom at 36: "[T]he Joint Board also fails to state the obvious fact that the CCL charge is a universal service support flow." Footnote omitted. AT&T at 11: "the fundamental problem [is] that the CCLC is an arbitrary charge levied on interstate carriers rather than on the cost-causer." *See also* Ad Hoc at 23.

the SLC would be reduced.[106] Incumbent LECs -- the only access service providers required to charge such elements -- would continue to have the same level of intrastate costs shifted into the interstate jurisdiction, but would have a reduced level of interstate SLC revenues by which to recover those costs. This would force ILECs to rely upon artificially higher prices for other access services, and result in both a clear violation of the 1996 Act's mandate for explicit universal service support and of the competitive neutrality principle.[107] Further, because the SLC is capped at a level short of the common line costs in many locations and the CCLC is used to recover the remaining costs, the CCLC also serves as a mechanism for subsidizing low-volume customers from high-volume customers.

To place the costs on the cost-causer and to eliminate this subsidy, the Commission should abolish the CCLC, which recovers non-usage sensitive costs on a usage-sensitive basis, and raise, rather than lower, the SLC cap.[108] As the Commission recognized shortly after the original implementation of the SLC, "significant, tangible benefits" were produced "for large and small telecommunications customers and for the

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[106] Justifying a reduction of the SLC cap due to elimination of Long Term Support payments by large ILECs is particularly in error. LTS was developed to hold down the CCLC rate charge by NECA members. *See Recommended Decision* at ¶ 190, n.613. Thus, any reduction in common line costs due to the elimination of LTS payments by large ILECs should flow directly to the ILEC's CCLC alone.

[107] NASUCA at 5-7 attempts to construct an argument that the SLC must be rebalanced to obtain a 50%-50% "fair share" of revenues from the SLC and the CCL. This argument fails entirely because the underlying predicate is that hidden subsidies must be continued through the use of the CCLC rate element.

[108] AirTouch at 15 says that "it is difficult to see how the Commission can rationalize forcing the states to adopt principles of cost-causative pricing for interconnection, while disavowing their applicability in an entirely analogous situation."

nation as a whole" as a direct result of adoption of the SLC.[109] Nothing has changed in the intervening years. In the instant proceeding, commenters once more agree that an increase in the SLC cap would better place cost recovery on the cost-causer and be a more economically efficient rate structure.[110] Therefore, the SLC cap should be removed, and the SLC set equal to the total common line cost in the same small geographic areas used for determining whether an area is high-cost. De-averaging the SLC in this manner would best match cost recovery with cost causation, and allow ILECs the opportunity for competitively neutral recovery of common line costs.

Moreover, it is not clear than a cost-based SLC in combination with the local service rate would result in a price for local service that would harm subscribership. Ad Hoc (at 27) explains that "[g]iven the changes in the CPI over the past ten year period, there is significant room to increase the SLC without those increases exceeding the increase in prices experienced by consumers for other products and services in the economy as a whole," and that an inflation-adjusted SLC cap would be $5.30 and $8.33

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[109] MTS and WATS Market Structure; Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, Report and Order, CC Docket Nos. 98-72 and 80-286, 2 FCC Rcd 2953, 2957 (1987).

[110] *See* Sprint at 16: "An increase in subscriber line charges to recover non-traffic sensitive (NTS) loop costs (NTS costs currently recovered by the CCLC and by the interstate local switching rate element) is both reasonable and justified." Ad Hoc at 25: "allowing ILECs to collect the flat-rate charge directly from the end-user in the case of customers who elect not to choose a PIC . . . should be adopted not only as to those who do not choose a PIC, but rather applied uniformly to all customers." Emphasis in original. GSA at 4: "[E]conomic efficiency requires that the rates for a service reflect both the amount and structure of the underlying costs of providing that service. Clearly, recovering non-usage sensitive loop costs through usage-based charges does not meet this standard." *See also*, CSE Foundation at 14-15.

for residence and multi-line business, respectively.[111] And, Sprint (at 16-17) notes that "[e]conomic research consistently points out that income, and not price, is the major factor for determining whether a residence subscribes to basic telephone service." Further, for low-income individuals in particular, the Joint Board recommended, and many commenters support,[112] an expansion of the Lifeline program into all states that would address that very issue. If, however, the Commission and the Joint Board were to find that a cost-based SLC would be likely to result in a price for local service that would be unaffordable, the Commission could cap the SLC and provide the difference from the universal service fund.[113]

XI. UNIVERSAL SERVICE SUPPORT SHOULD ONLY BE AVAILABLE TO FIRMS PROVIDING SERVICE USING FACILITIES FURNISHED BY OTHERS IF THE UNDERLYING FACILITY OWNER IS FAIRLY AND FULLY COMPENSATED.

Excel (at 11-15) chooses to ignore the requirements of Section 214(e)(1) that an *Eltel* must use "its own facilities or a combination of its own facilities and resale" and proposes that firms providing local service purely through reselling an ILEC's local service either be eligible to obtain universal service support, or that the ILEC be

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[111] *See also*, AirTouch at 16-18 and Sprint at 16-17. GTE notes that merely adjusting the SLC to reflect inflation would not satisfy the 1996 Act because the residence/business differential is a form of implicit subsidy.

[112] *See, e.g.,* WorldCom at 22-26, GSA at 8, NASUCA at 11, Universal Service Alliance at 13, Washington UTC at 11.

[113] WorldCom at 37-38, Ad Hoc at 24, Ameritech at 16, and GTE at n.115 oppose the Joint Board's suggestion (at ¶ 776) of a flat charge on the Presubscribed Interexchange Carrier. This would result in a charge that would not be competitively neutral because it would be assessed only on IXCs. Furthermore, as GTE at 76 explains, it is hard to imagine how a flat charge assessed by IXCs to end users is permissible when the exact same charge applied by an ILEC would not be allowed.

required to pass through support to the reseller to avoid over-recovery by the ILEC. Excel claims that the reseller will "step into the shoes of the LEC and assume the risks associated with providing the services supported by the federal universal service mechanism, while guaranteeing the LEC a return on its investment in those facilities." Thus, Excel proposes that the reseller should receive universal service support.

Setting aside the legal infirmities of Excel's proposal, Excel's underlying premise is pure fiction for a variety of reasons. First, the reseller of local service assumes no risk at all because the reseller has no obligation to continue to pay for the resold service if the end user customer chooses another local service provider. The reseller would simply tell the facility owner to stop providing the resold service to the reseller's customer, thereby leaving the facility owner to seek cost recovery from other sources. Thus, resellers provide absolutely no "guarantee" of anything, and assume no risks whatsoever.

Second, providing the facility owner with universal service support while allowing the facility owner to apply "normal charges" for the resold local service will not result in over-recovery as Excel claims. The local service rate charged by an ILEC in a high-cost area is now and will undoubtedly continue to be constrained by state regulators to be below cost, *i.e.*, at a price the agency deems "affordable." The resulting compensation the ILEC obtains from the reseller is well below cost, and falls far short of any purported "guarantee" of a "return on investment" or over-recovery as Excel claims. In fact, "because the CLEC is obtaining service out of the wholesale tariff (retail rates less hypothetically "avoidable" costs), the CLEC is already getting the benefit of both hidden subsidies and universal service payments (if any) inherent in the ILEC's retail

rates."[114]

Finally, the 1996 Act's dictate of explicit support means that any new explicit support an ILEC receives must be counterbalanced by reductions in prices currently providing hidden support.[115] The Commission has certainly recognized the relationship between explicit universal service support and necessary reductions to existing rates.[116] Thus, there will be no over-recovery by providing universal service support to the ILEC.[117]

The only circumstance in which universal service support should be made available to firms reselling local service is when the payment to the underlying facility owner reflects a market price for use of the infrastructure. to the extent the price the facilities owner is allowed to charge to the reseller is constrained by regulation to something less than cost plus a reasonable profit, then the facilities owner must receive the universal service support.[118] Any other scheme will result in a taking of the

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[114] Sprint at 21.

[115] Universal service support provided on behalf of schools and libraries would not be involved in a rate "rebalancing" computation because it is "new" support not currently contained in any prices.

[116] Access Reform NPRM ¶¶ 245-246.

[117] MFS at 17 correctly recognizes that "If the prices charged by facilities-based carriers and resellers are based on the costs of providing service, and any subsidies are explicitly reflected on customers' bills, then there will be no opportunity for double recovery of subsidies." Emphasis added. The "if" word explicitly acknowledges that the prices charged to resellers may not be based upon costs, but may be constrained to be something less.

[118] *See* SBC at 21-22.

infrastructure owner's property without just compensation.[119]

XII. UNIVERSAL SERVICE SUPPORT SHOULD NOT BE PROVIDED TO SCHOOLS AND LIBRARIES FOR INSIDE WIRE OR INTERNET ACCESS FEES.

A broad range of diverse commenters join GTE (at 89-97) in objecting to the *Recommended Decision*'s inclusion of inside wiring and Internet access within the scope of universal service funding. MFS (at 30-32) points out that the cost of the subsidy to schools, libraries and health care providers would be enormous under the interpretation of the Joint Board -- amounting to about $2.25 billion or $1.25 per line per month.[120] Sprint (at 12-14) maintains subsidies to CPE and inside wire would conflict with the statutory mandate and existing Commission policy. The Illinois CC states:

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[119] AT&T at 3 and CompTel at 14 argue that universal service support should be available to the purchasers of unbundled network elements pursuant to the requirements of Section 251. GTE has no objection as long as facilities-based carriers receive a fully compensatory price for unbundled elements, and if purchasers of unbundled elements adhere to regulatorily-constrained prices for universal service. Barring either of those conditions, however, the Commission should reject this claim because the purchaser of unbundled elements would receive a double windfall; once from the universal service fund, and secondly from below-cost prices subsidized by the other customers of the facility owner. Moreover, if prices for unbundled elements are based on total element, long-run incremental cost ("TELRIC"), it is unclear whether this would reflect the actual total cost of universal service, particularly considering that unbundled element prices are not likely to be deaveraged sufficiently to target universal service support to the same geographic areas used to identify support needs. Further, TELRIC does not purport to measure the cost of any particular service, but rather the cost of the elements that comprise many services. Confounding this analysis is the 1996 Act, which at Section 214(e)(1)(A) appears to preclude states from designating a carrier as eligible to receive universal service support unless it uses its own facilities or a combination of its own facilities and resale of another carrier's services.

[120] The Delaware PSC at 6 is concerned that "schools in other states - which have not made the previous efforts to wire their classrooms - will, most likely, quickly exhaust the first $2 billion of the fund with their high invoices reflecting the greater expenditures for inside wiring."

> There is no indication that Congress envisioned that telecommunications companies would finance the interior wiring of each classroom on a campus. Section 254(h)(2)(A) requires that the FCC's rules to enhance access to advanced telecommunications and information services must be economically reasonable. Until such time as the FCC has finalized its cost estimates, it has no basis on which to make a determination that the costs of funding internal connection to all classrooms are economically reasonable.

These parties and many others express concern with the ballooning amount of subsidy that would follow from the Joint Board's conclusion that inside wiring and Internet access are to come within the subsidy.[121]

WorldCom (at 28-29) shares the "serious legal and policy concerns" of Commissioner Chong "about including inside wiring in the `services' to be provided to schools and libraries." AT&T (at 18) raises similar legal and policy questions because "the Act does not appear to provide for funding Internet access or inside wiring." "[T]he Act is very specific," it says (at 19-20), "that only telecommunications services are to be discounted and subsidized by funds drawn from telecommunications carriers' support obligations."[122]

Perhaps the most thoughtful analysis is offered by California Consumer Affairs, which says (at 24): "[T]he fact remains that the Commission does not have jurisdiction over inside wiring or [CPE], and nothing in the [1996] Act bestows on the Commission that power." California Consumer Affairs (at 23-30) reviews carefully the language of the statute and the unfortunate policy implications of Commission action imposing a discount requirement on services it does not regulate. California Consumer Affairs

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[121] *See, e.g.*, Vermont Comments at 16, AT&T at 20.

[122] *See also*, California Consumer Affairs at 3-34.

maintains correctly that bringing services not regulated by the FCC within the universal service contribution mechanism goes far beyond the scope of Commission authority.

GTE suggests that this ill-advised action would be likely to even raise the issue of whether the Commission, to the extent that a subsidy support mechanism falls outside the scope of regulating rates and services and embraces services not furnished by the company involved and not regulated by the FCC, is crossing the line from a contribution mechanism under Congressional mandate to the equivalent of an unauthorized and unlawful tax.[123]

Questions raised by Commissioner Chong and many parties beg to be answered before the extraordinary measure is taken of requiring a massive program to fund inside wiring. GTE urges the FCC to put aside this notion and the adventurous interpretation of the statute that it entails, and to focus on the task explicitly assigned to the FCC: assuring universal service. It is especially clear that to prejudice full completion of the FCC's direct and unarguable statutory mandate in order to undertake a program

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[123] *See* Chicago and North Western Transp. Co. v. Webster County Board of Supervisors, 880 F. Supp. 1290, 1302-1306 (USDC-Northern District of Iowa, 1995); Union Pacific R. Co. v. Public Utility Comm'n, 899 F.2d 854 (9th Cir. 1990); San Juan Cellular Tel. Co. v. Public Service Comm'n of Puerto Rico, 967 F.2d 683, 685-686 (1st Cir. 1992); National Cable Television Ass'n, Inc. v. United States, 415 U.S. 336, 340-341 (1974). In requiring payment into the universal service fund in order to subsidize inside wiring -- which is not regulated by the FCC -- the Commission appears to come within the four key criteria employed to decide whether a levy is a tax: (1) acting under (purported) legislative authority; (2) to raise revenue; (3) by a charge against similarly situated parties; and (4) for the public benefit.

essentially independent of either interstate communications or universal service would be a grave misreading of the congressional direction and of what is most urgently required in the public interest.

Respectfully submitted,

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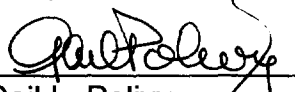
By 

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Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "GTE's Reply Comments" have been mailed by first class United States mail, postage prepaid, on January 10, 1997 to all parties of record and members of the Federal-State Joint Board.

Ann D. Berkowitz